

ORIGINAL

MARK J. BENNETT 2672
Attorney General of Hawaii

FILED IN THE
UNITED STATES DISTRICT COURT
DISTRICT OF HAWAII

CINDY S. INOUE 3968
JOHN M. CREGOR, JR. 3521

FEB 17 2006

Deputy Attorneys General
Department of the Attorney
General, State of Hawaii
425 Queen Street
Honolulu, Hawaii 96813
Telephone: (808) 586-1494
Facsimile: (808) 586-1369
Email: John.M.Cregor@hawaii.gov

at 12 o'clock and 30 p.m.
SUE BEITIA, CLERK

Attorney for Defendants

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII**

ANTHONY NESBIT,

Plaintiff,

vs.

DEPARTMENT OF PUBLIC SAFETY,
STATE OF HAWAII, et. al.

Defendants.

CIVIL NO. 03-00455 SOM-KSC
(Consolidated)

**DEFENDANTS' SUPPLEMENTAL
MEMORANDUM IN SUPPORT OF
DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT, FILED
FEBRUARY 9, 2006; CERTIFICATE
OF SERVICE**

WILLIAM KOTIS,

Plaintiff,

vs.

STATE OF HAWAII DEPT. OF
PUBLIC SAFETY, et. al.

Defendants.

CIVIL NO. 04-00167 SOM-KSC
(Consolidated)

Hearing

Date: April 10, 2006

Time: 9:00 a.m.

The Honorable Susan Oki Mollway

Trial: May 23, 2006

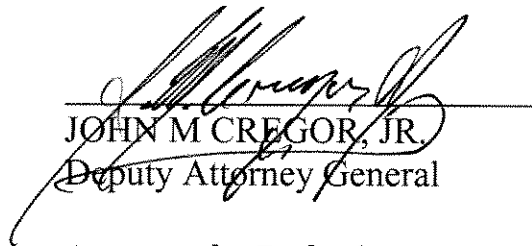
**DEFENDANTS JUNE TAVARES AND DEBORAH STAMPFEL'S
SUPPLEMENTAL MEMORANDUM IN SUPPORT OF DEFENDANTS'
MOTION FOR SUMMARY JUDGMENT, FILED FEBRUARY 9, 2006**

Defendants JAMES L. PROPOTNICK, FRANK LOPEZ, EDWIN SHIMODA, NOLAN ESPINDA, ERIC TANAKA, RANDY ASHER, SGT. SAIA FINAU, CINDA SANDIN, MONICA LIRTZ, CHERYL ZEMBIK, LYLE KANOA, G. SHERIDAN, and DAVID APAO, by and through their attorneys, Mark J. Bennett, Attorney General, and Cindy S. Inouye and John M. Cregor, Deputy Attorneys General, hereby submit their Supplemental Briefing on a specific issue as directed by this Court on February 9, 2006.

This court has requested an explanation of an apparent discrepancy between two declarations filed by Monica Lortz in this case. Upon reflection, after filing of the first declaration, Lortz recalled that at the time of the Plaintiff's housing assignment, the policy of separate gang and non-gang quads had not yet been formalized; therefore, it was more accurate for the second declaration to speak only of an appropriately safe cell. Nonetheless, even at the time in question there was an informal separation of LaFamilia gang members in one quad, USO gang members in another quad and unaffiliated inmates in the third quad of Module C. Both declarations are accurate as to Lortz's expectations when making the housing

assignment and the change in language between the two declarations is technically more accurate but was not intended to change the substance of her testimony.

DATED: Honolulu, Hawaii, February 17, 2006.



JOHN M CREGOR, JR.
Deputy Attorney General

Attorney for Defendants
JAMES L. PROPOTNICK, FRANK
LOPEZ, EDWIN SHIMODA, NOLAN
ESPINDA, ERIC TANAKA, RANDY
ASHER, SGT. SAIA FINAU, CINDA
SANDIN, MONICA LIRTZ, CHERYL
ZEMBIK, LYLE KANOA, G. SHERIDAN,
and DAVID APAO

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII**

ANTHONY NESBIT,

Plaintiff,

vs.

DEPARTMENT OF PUBLIC
SAFETY, STATE OF HAWAII, et. al.

Defendants.

WILLIAM KOTIS,

Plaintiff,

vs.

STATE OF HAWAII DEPT. OF
PUBLIC SAFETY, et. al.

Defendants.

CIVIL NO. 03-00455 SOM-KSC
(Consolidated)

CERTIFICATE OF SERVICE

CIVIL NO. 04-00167 SOM-KSC
(Consolidated)

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on February 17, 2006, a copy of the foregoing document was served on the following parties at their last known address via U.S. Mail, postage prepaid:

Anthony Nesbit #A0701329
CCA/Tallahatchie Correctional Center
295 US Highway 49 South
P.O. Box 388

Tutwiler, MS 38963

Plaintiff Pro Se

William Kotis #A0182281
CCA/Tallahatchie Correctional Center
295 US Highway 49 South
P.O. Box 388
Tutwiler, MS 38963

Plaintiff Pro Se

DATED: Honolulu, Hawaii, February 17, 2006.



JOHN M CREGOR, JR.
Deputy Attorney General

Attorney for Defendants
JAMES L. PROPOTNICK, FRANK
LOPEZ, EDWIN SHIMODA, NOLAN
ESPINDA, ERIC TANAKA, RANDY
ASHER, SGT. SAIA FINAU, CINDA
SANDIN, MONICA LIRTZ, CHERYL
ZEMBIK, LYLE KANOA, G.
SHERIDAN, and DAVID APAO